IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1777 OF 2007

Bhau Babu Aswale (Pawar)
(Since deceased through heirs
and L. Repr.)
a) Smt. Kamalabai Bhau Pawar
and Ors. .....Petitioners.

V/s

Ganu Babu Aswale
(Since deceased through heirs
and L.Rs.)
a) Shri Shripati Ganu Pawar(Aswale)
and Ors. .....Respondents.

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Mr. B.R. Patil for Petitioners.

Mr. B.A. Walimbe for Respondent Nos. 1(a) to 1(f).

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CORAM: V.M. KANADE, J.
DATE : 21st August, 2007

P.C.:

1. Heard the learned Counsel appearing on behalf of Petitioners and the learned counsel appearing on behalf of Respondent Nos 1(a) to 1(f).

2. Petitioners take exception to the order passed by Civil Judge, Junior Division, Shirala dated 14/11/2006 whereby the application which was filed by respondents - original defendant Nos. 1 and 2 for recalling the reference on the issue of tenancy was dismissed. Original plaintiff and the

respondents were real brothers. There was a dispute between the parties in respect of Survey No.267/1/1, 367/2 and 367/1/2. It is the case of petitioners herein that in respect of half portion of Survey No.367/2 and entire portion of Survey No. 367/1/2, a final order has been passed by the MRT in which it was held that the land was held jointly by all brothers as tenants. It is submitted that, therefore, the matter, having attained finality, it was not necessary to refer the said issue of tenancy before the tenancy authorities.

3. The learned Counsel appearing on behalf of respondents, on the other hand, submitted that the order on which reliance is placed by the petitioners was non-est since the said order was obtained suppressing the material facts and that, prior to this order being passed, Tenancy Awal Karkun had decided the said issue, finally, in the year 1975 itself and the said order, being not challenged, had become final and, therefore, the petitioners herein could not have obtained a declaration as prayed by them before the MRT in the subsequent proceedings.

4. In my view, in view of the rival claims made by the parties, trial court was justified in rejecting the said application. The trial court has further observed that the defendants had not raised this issue regarding recalling of tenancy for almost a period of 12 years and that the higher court has directed the trial court to refer the said issue of tenancy to the concerned authorities. I do not see any

reason to interfere with the said order. It is clarified that all contentions raised by the petitioners and respondents are kept open and MRT shall decide this issue as expeditiously as possible and, in any case, within a period of six months after it is re-established by the Government. The MRT shall decide the issue after giving opportunity to both sides to raise their contentions and finally it shall dispose it of on merits and in accordance with law.

5. With the above directions, Petition is dismissed.

(V.M. KANADE, J.)